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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re MELODY R.,

a Person Coming Under the Juvenile
Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

LAURA R.,

Defendant and Appellant.

B289346

(Los Angeles County
Super. Ct. No. 17CCJP01915A)

APPEAL from a judgment of the Superior Court of Los Angeles
County, Stephen Marpet, Commissioner. Dismissed.

Elizabeth C. Alexander, by appointment of the Court of Appeal, for
Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant
County Counsel, and Jeanette Cauble, Principal Deputy County Counsel,
for Plaintiff and Respondent.

Appellant Laura R. (mother) maintains that reversal of juvenile court orders is required because respondent Department of Children and Family Services (DCFS) and the court failed to satisfy their respective obligations under the Indian Child Welfare Act, 25 United States Code section 1903, et. seq. (ICWA). However, because the child who is the subject of this action has been returned to parental custody, there is no longer an Indian custody proceeding. Even if mother is correct, we cannot grant effective relief. Accordingly, the appeal is dismissed as moot.

FACTUAL AND PROCEDURAL HISTORY

DCFS received a referral on October 26, 2017, the day after Melody R.'s premature birth, after both mother and child tested positive for illicit drugs. Melody was subsequently detained from mother's care.

On November 20, 2017, DCFS filed a petition, pursuant to Welfare and Institutions Code¹ section 300, on behalf of Melody. The petition alleged that mother had an 18-year history of substance abuse, had used illicit drugs during her pregnancy and was a current user of illicit drugs, and that Melody was born with a positive toxicology screen. The petition also alleged that mother had a drug-related criminal conviction, and suffered from mental and emotional problems. Taken together, these factors rendered mother incapable of providing regular care and supervision for the newborn. (§ 300, subd. (b).) That petition

¹ Further undesignated statutory references are to this code.

was superseded by the operative first amended petition, filed on March 21, 2018, adding drug–related allegations as to Melody’s father which are not relevant here.²

Following the detention hearing on November 21, 2017, Melody was placed in foster care, and mother was given monitored visitation. At the time of that hearing, mother informed the court she might have Cherokee and Blackfoot Ancestry. DCFS was ordered to investigate mother’s possible Native American heritage and to provide appropriate tribal notice, as necessary.³ DCFS subsequently spoke with Melody’s maternal grandparents, who provided some information about mother’s Native American ancestry. DCFS sent notice to four tribes, the Bureau of Indian Affairs and the Secretary of the Interior. By the time of the jurisdiction/disposition hearing on April 6, 2018, no tribe had come forward to claim Melody was a member of or eligible for membership in the tribe, and the juvenile court found, based on the record, Melody’s case was “not an ICWA case.”

In connection with the combined jurisdiction/disposition hearing, DCFS reported that mother had been consistently punctual for her

² Melody’s presumed father, Antonio O., is not a party to this appeal. We confine our discussion to facts relevant to mother’s appeal.

³ If there is reason to believe that a child who is the subject of a dependency proceeding is an Indian child, the ICWA requires that notice of the proceeding be given to the implicated tribes or the Secretary of the Interior. (*In re Desiree F.* (2000) 83 Cal.App.4th 460, 471; 25 U.S.C. § 1912, subd. (a).) “The Indian status of the child need not be certain to invoke the notice requirement.” (*Desiree F.*, *supra*, at p. 471.)

thrice weekly visits with Melody, and was affectionate with and attentive to the infant. Melody's foster mother said mother called every day to see how the baby was, and so the child could hear her voice.

Mother had been diagnosed with Bipolar Disorder eight years earlier. She took prescribed medication for her illness for five years before choosing to discontinue it because she believed she no longer needed it. Since this case was opened, mother had enrolled in mental health counseling and had begun taking prescribed medication again. Mother also had completed a parenting program, and was participating in individual, group and substance abuse counseling. Since December 2017, mother had undergone at least 10 drug tests (one no show, and four of which were positive for marijuana),⁴ and was progressing in her treatment programs.

The juvenile court sustained the first amended petition as pled, declared Melody a dependent and ordered her suitably placed, and granted reunification services for parents. The matter was set for progress and status review hearings. Mother appealed.

While this appeal was pending, Melody was returned to mother's custody, and the juvenile court terminated its jurisdiction over the child. DCFS asked this court to take judicial notice of post disposition minute orders, dated October 5 and 26, 2018, which reflect that Melody has been returned to mother's care and dependency court jurisdiction

⁴ Mother submitted evidence showing she had taken 13 drug tests during this period, all of which were negative.

has been terminated. Mother has not objected to our taking judicial notice of these orders. We do so, finding both are relevant. (See Evid. Code, §§ 210, 452, subd. (d)(1).)

DISCUSSION

Mother takes issue with the scope of DCFS ICWA investigation and the thoroughness of the court's review of tribal responses. DCFS argues that no error occurred. DCFS also argues that the issue of error, if one occurred, is moot. Because Melody has been returned to mother's care and the juvenile court has terminated jurisdiction over the child, there is no longer an Indian custody proceeding, ICWA does not apply, and this court cannot provide effective relief. DCFS is correct.

"ICWA expressly focuses on the removal of Indian children from their homes and parents, and placement in foster or adoptive homes." (*In re J.B.* (2009) 178 Cal.App.4th 751, 759 (*J.B.*), italics omitted.) An Indian "child custody proceeding" is any action that involves foster care placement, termination of parental rights, and pre-adoptive and adoptive placements (25 U.S.C. § 1903(1)), *but does not include* a proceeding for "*placement with a parent.*" (*J.B.*, at pp. 758, some italics added; accord *In re M.R.* (2017) 7 Cal.App.5th 886, 904-905; *In re Alexis H.* (2005) 132 Cal.App.4th 11, 15 (*Alexis H.*) [ICWA's purpose does not come into play if an Indian child is not placed with another family].) Once the juvenile court placed Melody with her mother and terminated jurisdiction over the child, ICWA's relevance ended. Native American tribes have no interest in intervening in a case where a juvenile court's

final judgment places an Indian child with her parent. (See *J.B.*, at p. 760; *Alexis H.*, at p. 15.)

This action no longer involves an Indian child custody proceeding or a foster or adoptive placement. Melody has been returned to mother's full care and custody, and dependency court jurisdiction has terminated. Even if the trial court and DCFS failed to fulfill their duties under the ICWA, mother has not shown how we can grant her effective relief. With the termination of juvenile court jurisdiction, there is no effective relief this court can provide as to Melody. Reversal based on any alleged errors under the ICWA would be futile, and "[t]he law neither does nor requires idle acts." (Civ. Code, § 3532; see *In re Melissa R.* (2009) 177 Cal.App.4th 24, 33-34 [no basis for reversal where ICWA contentions were moot]; see also *In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1054.) The appeal is dismissed as moot.⁵

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⁵ If and to the extent Melody becomes the subject of a future "child custody proceeding" under ICWA, the duties of inquiry and notice will arise again. (See § 224.3, subds. (a), (b) [courts and child welfare agencies have an affirmative and continuing duty of inquiry and notice]; see e.g., *In re Isaiah W.* (2016) 1 Cal.5th 1, 11 [juvenile court has a continuing duty to inquire into a child's Indian status at "all dependency proceedings" involving that child].)

DISPOSITION

The appeal is dismissed.

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WILLHITE, J.

We concur:

MANELLA, P. J.

COLLINS, J.